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2100 Pennsylvania Avenue, N.W.
Washington DC 20037-3202

In re Application of:

SHIGEHARU USHIWATA et al

Serial No.: 09/930,442

Filed: Aug. 16, 2001

Docket: Q65849

Title: **CUTTER WITH LASER GENERATOR
THAT IRRADIATES CUTTING
POSITION ON WORKPIECE TO
FACILITATE ALIGNMENT OF
BLADE WITH CUTTING POSITION**

DECISION ON PETITION TO
WITHDRAW FINALITY AS
PREMATURE

This is a decision on the petition filed on April 21, 2006 to withdraw the finality of the Office Action of March 28, 2006.

The petition is **DISMISSED as moot.**

In his April 21, 2006 petition the applicant requested a withdrawal of the finality of the Office action on March 28, 2006. In support of his petition, the applicant argues that the September 21, 2005 amendment did not necessitate a final rejection.

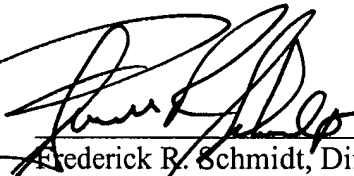
The record shows that:

- 1) In response to the examiner's non-final Office action of June 30, 2005, on September 21, 2005, the applicant filed an amendment which cancelled claims 1-2, 4-9, 25-34, 36-37, 41-45, 47-52 and amended claims 3, 10, 11, 35, 38-40, 46. In the amendment, claims 23-24, 53-78 were unamended since they were indicated as allowable.
- 2) On March 28, 2006, the examiner issued a final Office Action, rejecting most of the claims including some previously indicated allowable claims under 35 U.S.C. 103, and stating that the amended claims and previously indicated allowable claims necessitated new grounds of rejection, thus making the Office Action final. In particular, the examiner relied on Stone reference that was cited in the child application by the applicant.
- 3) On April 21, 2006, the applicant filed the present petition to withdraw the finality of the Office Action. Specifically, the applicant argued that the examiner's final rejection would unjustly deprive applicant of at least one chance to respond to the rejection on first time rejected claims.

- 4) On July 27, 2006, the applicant submitted an amendment after final, which included remarks and rewrote the allowable claims in independent form without acquiescing to the examiner's final rejection.
- 5) In response to the applicant's amendment after final of July 27, 2006, the examiner issued a notice of allowance on Aug. 11, 2006 for the application. Specifically, the examiner found the applicant's amendment after final did place the application in condition for allowance and, therefore, the finality of that action was automatically withdrawn.

In view of the history, the relief the applicant requested, namely the withdrawal of the finality of the March 28, 2006 Office Action, has already occurred. The application has already been allowed on Aug. 11, 2006. Accordingly, the petition is dismissed as moot.

Any inquiry regarding this decision should be directed to Henry Yuen, Special Program Examiner, at (571) 272-4856.



Frederick R. Schmidt, Director
Technology Center 3700